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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/222,282	12/28/1998	MARK RASPER		3386

7590

08/21/2003

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EXAMINER

PRONE, JASON D

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 08/21/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

EC

# Office Action Summary

Application No.

09/222,282

Applicant(s)

RASPER ET AL.

Examiner

Jason Prone

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 May 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 1998 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                      6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

In view of the foot note on page 3 of the Board decision mailed on 14 May 2003, prosecution is re-opened for consideration of the issues under 35 U.S.C. 112 raised by the Board in said note. In addition, other informalities that have come to the attention of the examiner are noted.

#### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: In Figure 3, item "35". A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Specification***

2. The disclosure is objected to because of the following informalities: The content of the specification is lacking the "Brief Description of the Several Views of the Drawing(s)" section, see MPEP § 608.01(f). For, example, without this brief description section, it is difficult to determine the relationship between Figure 2 and Figure 4 because the Figures do not share any labeled items.

Appropriate correction is required.

#### ***Claim Objections***

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3. Claim 1 is objected to because of the following informalities: In paragraph "g", the period after the word "cut" should be replaced with a comma. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 1, it has been noted by the Board that the preamble of the claim is not commensurate in scope with the body of the claim in that the preamble is directed to an indexing means for a cutting knife while the body of the claim actually recites both a circular knife and an indexing means for the knife. ¶ Additionally, the claim is replete with "means" recitations and it is not apparent to the Board or the examiner what structure is being disclosed in the specification that corresponds to these "means". Merely by way of example, it is not clear what two structures correspond to the recited "means" in paragraphs c) and d) of the claim. While one of these "means" could correspond to the keyway shown in Figure 4, no other structure appears to correspond to the other of these two "means". If means-plus-function language is employed in this or any other added claim, an adequate disclosure showing what is meant by that language must be set forth in the specification. In view of this paragraph, it is asserted that the applicant has in effect failed to particularly point out and distinctly claim the

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invention as required by the second paragraph of section 112. In re Dossel, 115 F .3d 942, 946, 42 USPQ2d 1881 (Fed. Cir. 1997).

In regards to claim 1, the phrase "a non-rotating circular core cutting knife", on line 1, and the phrase "...rotates the knife in the direction of rotation of a core...", on line 2 of paragraph "g", are unclear. It is uncertain how a non-rotating knife rotates.

***Allowable Subject Matter***

6. It is to be noted that the claim appears to be readable over the art of record. However, in view of the issues under 35 U.S.C. 112, comment with respect to it's allowability cannot be made at this time.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. King, Montgomery, Bocker, Ainoura, Terauchi, Languillat, Bentley, Johnson, Satran et al., Cole et al., and Ager et al.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 703-605-4287. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

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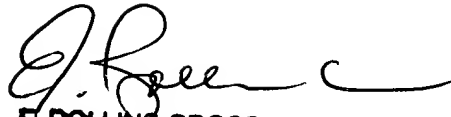


JP

August 13, 2003



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